

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

WISCONSIN ENERGY CORPORATION,)	
INTEGRYS ENERGY GROUP, INC.,)	
PEOPLES ENERGY, LLC, THE PEOPLES)	
GAS LIGHT AND COKE COMPANY,)	
NORTH SHORE GAS COMPANY, ATC)	
MANAGEMENT INC., and AMERICAN)	
TRANSMISSION COMPANY LLC)	Docket No. 14-0496
)	
Application pursuant to Section 7-204 of the)	
Public Utilities Act for authority to engage in a)	
Reorganization, to enter into agreements with)	
affiliated interests pursuant to Section 7-101, and)	
for such other approvals as may be required under)	
the Public Utilities Act to effectuate the)	
Reorganization)	

**THE PEOPLE OF THE STATE OF ILLINOIS’,
THE CITY OF CHICAGO’S AND THE CITIZENS UTILITY BOARD’S
EMERGENCY MOTION TO REQUIRE ADDITIONAL TESTIMONY FROM THE
JOINT APPLICANTS REGARDING NEEDED TRANSITION PLANS RELATED TO
THE PEOPLES GAS LIGHT & COKE COMPANY’S
ACCELERATED MAIN REPLACEMENT PROGRAM**

The People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), the City of Chicago (“City”), and the Citizens Utility Board (“CUB”) (collectively, the Governmental and Consumer Intervenors or “GCI”), through their attorneys, pursuant to Section 7-204 of the Public Utilities Act (“the Act”), sections 200.190 and 200.870 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), and Section 8-102 of the Act, 220 ILCS 5/8-102, request that the Commission give immediate and due consideration to the findings and recommendations of the May 5, 2015 Liberty Consulting Group’s Final Report on The Peoples Gas Light and Coke Company’s (“Peoples Gas” or “PGL”) Accelerated Main Replacement Program (“AMRP”) and that the

record in this case be re-opened, pursuant to Section 200.870 of the Commission's Rules of Practice, for the limited purpose of:

- 1) including the Liberty Report¹; and
- 2) requiring the Joint Applicants² ("JA") to detail in sworn testimony a transition plan that ensures the seamless continuity of any on-going remedial efforts by PGL in response to the audit, including specific plans for fixing the documented, serious inter-corporate deficiencies tied to AMRP mismanagement that only the proposed acquiring company, Wisconsin Energy Corporation ("WEC") can address.³

GCI ask the Commission to take these actions, mindful of the limited opportunities, jurisdictionally, the Commission has to address WEC management practices. The analysis required of the Commission under Section 7-204 of the Act and the release of the Liberty Final Report demand that the Commission take such action in this docket.

The Liberty Final Report documents the disturbing state of PGL's safety- and service-critical AMRP, calls for fully engaged AMRP management at the highest executive levels⁴, and demonstrates the necessity for (currently non-existent) reorganization transition plans for the AMRP (AG Brief on Exceptions at 13; City/CUB Init. Br at 22-23). The problems identified in the Liberty Final Report can be effectively addressed only with the full, coordinated participation

¹ The Liberty Final Report is attached as Appendix A.

² The Joint Applicants include Wisconsin Energy Corporation ("WEC"), the would-be acquiring company), Integrys Energy Group (Peoples Gas's parent company) and Peoples Gas Light & Coke Company.

³ Accommodation in the schedule would need to be made, too, for Staff/Intervenor responsive testimony, and JA rebuttal testimony.

⁴ See Liberty Final Report at E-14: ("It is essential for Peoples Gas, Integrys, or whoever owns and operates the Chicago gas utility in the future to accept the need for a fundamental revision to thinking about meeting these challenges. The challenges remain and they may grow bigger as the years pass.") and E-15 ("The organization consists largely of Jacobs Engineering personnel, with limited leadership from Peoples Gas. The Integrys full-time program manager directing the work that Jacobs Engineering personnel largely perform was not located full-time in Chicago. This arrangement detracted from the ability to continuously follow and interact with project resources and engage on issues. Other Integrys members of the program management resided on the organization's periphery, not in key leadership roles.")

of PGL's would-be owners.⁵ This proceeding is the Commission's only opportunity to impose firm conditions (on any approval) that embrace PGL's proposed foreign corporate owners, as well as on the Illinois utility. Currently lacking from the record in this case -- and not considered in the Proposed Order ("PO") -- is any specific information that assures the Commission that WEC, the proposed new PGL owner, can accomplish a smooth transition to effective management of the PGL's AMRP. The Liberty Final Report makes clear that inter-corporate management relationships, inconsistent corporate cultures, and gross management deficiencies have to be addressed.⁶ It also documents the start of remedial action by Peoples Gas that must not be slowed as a result of the merger. The management failures the Liberty Final Report describes include a failure in inter-corporate management broader than PGL's reach, and implicate management levels above PGL in the multi-level organizational dysfunction. These documented failures will be exacerbated without efficient execution of a clear transition plan that will not disrupt remedial activity already begun. The opportunity for the Commission to address those identified inter-corporate failures, jurisdictionally, is here in this docket.

As the recent Proposed Order recognizes, the Commission has a statutory obligation to protect the interests of Illinois utilities and their customers. PO at 11. And in the face of the disturbing findings of the Liberty Final Report, the Commission must still be convinced that a reorganization will not diminish an affected utility's ability to provide service safely and efficiently, and is not likely to inflate rates with the costs of inefficiency -- before it can approve the reorganization. 220 ILCS 5/7-204(b)(1), (b)(7).

Given the severity of the AMRP problems documented in the Liberty Final Report, the impact of those problems on PGL's rates and its customers, and the JA's paucity of transition

⁵ See, e.g., Liberty Final Report at E-14, E-15.

⁶ *Id.*

planning, the Commission's responsibility to assemble and to examine the relevant information cannot be discharged hastily. The Commission's inquiry requires expanding the record to include the Liberty Final Report (to consider the interaction of a reorganization transition and its management recommendations), and additional testimony describing plans for an effective transition (to protect on-going remediation of unacceptable utility performance) and explaining how the new owners will assimilate the report's ownership/executive management recommendations. If this necessary process requires additional time before the Commission's decision on the proposed reorganization, Section 7-204(d) of the PUA provides adequate authority (which should be exercised) for the Commission to order a brief extension of the schedule to complete its duties.

In support of their motion, GCI state the following:

1. Sections 7-204(b) and 7-204(f) of the Act define several findings the Commission must make before it has authority to approve a merger. These findings are directly affected by the new information in the Liberty Final Report, which has not been considered in the recommended determinations of the Proposed Order.

a. Section 7-204(b)(1) requires a sustainable finding that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 5/7-204(b)(1). The Liberty Final Report confirms the testimony of the City of Chicago's Department of Transportation ("CDOT") expert Mr. Cheaks that the declining ability of PGL's aging system will not be fully corrected by PGL's flawed AMRP implementation detailed in the report. City/CUB Ex. 3.0 at 3-5, 49-51, City/CUB Init. Brf. at 2-3.

b. Section 7-204(b)(7) requires that the Commission find that the evidence of record prove that “the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.” 220 ILCS 5/7-204(b)(7). The Liberty Final Report details the sources of significant costs of inefficiency that AG expert Sebastian Coppola found have been incorporated in the utility’s current rates. Mr. Coppola testified that larger adverse rate impacts in the future are almost certain, and that testimony was corroborated by the Liberty Final Report. AG Ex. 2.0 at 7-8, Liberty Final Report at B-9. The Liberty Final Report also found that PGL’s cost management systems may be incapable of quantifying the costs of its own inefficiencies or the resulting customer burdens. Liberty Final Report at G-5, G-6.

c. Section 7-204(f) imposes on the Commission an obligation to determine the need for and to define “such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers.” The Liberty Final Report describes risks to the safety, service, and rates of PGL’s customers that are so dramatic in their depth and scope that they must be considered in deciding whether to approve the proposed reorganization and in defining the necessary protections if reorganization is approved.

Failure to consider the evidence in the Liberty Final Report, a Commission-imposed audit of an unprecedented infrastructure project that is directly relevant to the required statutory findings, would constitute an abrogation of the Commission’s duty to protect the public interest.

2. Last week, the Commission released the Liberty Final Report at its May 20, 2015 Open Meeting. The report documented the findings of a year-long audit of the Peoples Gas AMRP. The Commission ordered the audit in 2013 directing the auditors to “...examine the

reasonableness, prudence, or efficiency of any aspect of the utility's operations, costs, management, decisions or functions that may affect the *adequacy, safety, efficiency or reliability of utility service* or the reasonableness or *prudence of the costs underlying rates or charges for utility service.*"⁷ These are the core concerns of the statutory conditions on any reorganization approval. Based on that audit, the Liberty Final Report makes 95 separate recommendations⁸ that address the problems found at PGL and at affiliated companies controlled by PGL's owners. None of that information has been considered in this proceeding examining the proposed new ownership of PGL

3. The Liberty Final Report includes disturbing findings related to the management performance of Peoples Gas and its parent company, Integrys, regarding the AMRP, since the massive construction project's inception in 2010. The Liberty Final Report found non-existent cost management, no improvement in gas main leak rates, a startling increase in projected AMRP costs, an inability to project total AMRP costs going forward, and a general lack of PGL/Integrys oversight of the project. *See* Liberty Final Report at E-1 – E-3.⁹

In their more specific findings the Liberty auditors report the following:

- Top leadership not highly conversant with AMRP's performance issues and top-level oversight operating without a regular, consistent schedule or the use of key performance metrics. Liberty Final Report at B-14.

⁷ Docket Nos. 12-0511/12-0512 (cons.), Order at 61. (emphasis added).

⁸ Liberty Final Report, "Report Appendix B: List of Recommendations."

⁹ Crain's Chicago Business described the Liberty Final Report as concluding that the AMRP is a "train wreck." Steve Daniels, *Peoples Gas gas-main program a mess, auditor finds*, CRAIN'S CHICAGO BUSINESS, May 20, 2015, available at <http://www.chicagobusiness.com/article/20150520/NEWS11/150529994/peoples-gas-gas-main-program-a-train-wreck-auditor-finds>. The Commission itself has noted the problems with the AMRP and stated that the Liberty Final Report "outlines much-needed reforms to correct the course of the program." ICC Release of May 20, 2015, *ICC Releases Final Investigation Report of Peoples Gas Accelerated Main replacement Program*.

- Statistics that profile main replacement progress for management are incomplete and difficult to reconcile. *Id.* at D-3.
- No high priority given to developing and maintaining a strong cost management culture, poor management capabilities, an overly narrow approach to budget monitoring, rather than robust cost management, and a lack of proper tools, exacerbated by poorly defined roles and responsibilities. *Id.* at L-10.
- Use of flawed data for risk modeling and safety-related replacement prioritization. *Id.* at F-15.

A copy of the report is attached to this Motion as Appendix A. GCI request that the Commission re-open the record to include the Liberty Final Report in the record in this case.

4. The Liberty Final Report described remedial action that Peoples Gas and Integrys have begun, to respond to the auditors' 95 recommendations. For example, on the issue of developing a currently missing long term plan for the AMRP, the auditors write, "The Company recognizes this need, and has begun a significant effort to develop a Master Plan." Liberty Final Report at H-13. *See also, Id.* at L-17. With regard to the lack of any sort of AMRP cost management, and the need for a "structured, well-defined, and rigorously executed approach to managing costs", the auditors note that PGL has announced "a series of initiatives to address these issues" and further note that "It will take major effort and significant time to implement them, even if the Company gives them a high priority and dedicated resources." *Id.* at L-11. To advance these remediation efforts, the auditors found it appropriate to address the issues at the senior executive level of PGL and its owner. Planning far superior to that described in the Liberty Final Report will be required to avoid disrupting the remedial efforts reportedly under way. In light of the auditors' findings of mismanagement and PGL/Integrys initiation of remedial action, the necessary findings the Commission would have to make to approve the reorganization depend on answers now wholly absent from this record:

- How will the Joint Applicants ensure a seamless transition in the management of the AMRP?
- What if any decisions are planned by WEC related to management organization and personnel changes?
- What plans (if any) are in place to ensure that documented remedial action begun to date will not be negatively impacted or slowed by WEC's acquisition of Peoples Gas and its parent company Integrys?

5. GCI submit that testimony on these questions is needed, from the proposed new owners – entities which are only briefly subject to full Commission jurisdiction. To date, little if any detail has been provided by the JA about how the proposed corporate reorganization will impact the AMRP if the Commission approves the acquisition. Prior to the release of the Liberty Final Report, the Commission did issue a set of data requests to the Joint Applicants about Peoples Gas's trouble-ridden AMRP. The Commission asked for transition plans the JA have in place "to ensure a seamless changeover that avoids any diminishment of the *utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service* both leading up to and after closing the proposed reorganization."¹⁰ Notice of Commissioners' Data Request at 2-3 (emphasis added). In their responses, the JA admitted that they have "no formal transition plan at this time." JA Responses at 2. The findings of the Liberty Final Report make a different response and detailed information essential to the Commission making an informed analysis pursuant to Section 7-204.

6. Importantly, the Joint Applicants' complete failure to prepare a transition plan is in stark contrast to the actions of the joint applicants when AGL Resources Inc. ("AGL") proposed to purchase Nicor Inc., the parent company of Northern Illinois Gas Company

¹⁰ The highlighted portion of the quote from the Commissioners' Data Requests is taken directly from Section 7-204(b)(1) of the Act.

(“Nicor”), in the last major energy merger case decided by the Commission. There, Staff and AG/CUB argued that the joint applicants had failed to meet the requirements of Section 7-204(b)(1) because their case “principally consists of recitations about [Nicor’s] pre-merger service quality, AGL’s track record with previous mergers, declarations of good intentions and a pledge not to reduce NG’s aggregate staffing for three years.” *AGL Resources Inc., Nicor Inc. and Northern Illinois Gas Company d/b/a Nicor Gas Company, Application for Approval of a Reorganization Pursuant to Section 7-204 of the Illinois Public Utilities Act*, ICC Docket No. 11-0046, Final Order of December 7, 2011 at 11 (“*Nicor Merger Order*”). In response to Staff’s and AG/CUB’s arguments, the Commission stressed the significance of the integration planning process the AGL-Nicor joint applicants in that case conducted, stating

That exception concerns the integration planning process the JA have conducted since the Reorganization was announced. Specifically, JA explain, several hundred employees of AGL, NI and NG have worked since January 2011¹¹ on understanding and meshing the “processes, structures and practices” of the merging entities. JA state that these integration planning endeavors “assess the current state for each and every area of the two companies.” The JA further assert that their work on final operating plans will continue “until the Reorganization is closed.” ... JA underscore that approximately 3500 pages of documentation generated by JA’s integration planners were submitted to Staff and presented during the evidentiary hearings in this case.

Id. at 11-12 (citations omitted). The Commission added:

Beyond their evidence of prior and ongoing operating experience, and of specific pledges in support of future operations, the JA point to the ongoing process of integrating the merging entities, as described above. The fact that the JA are conducting this process with a significant commitment of personnel is itself evidence that service quality will be maintained after reorganization. Indeed, it is, conceptually, exactly what needs to occur to achieve a smooth integration of the merging entities.

¹¹ January 2011 was the month in which the AGL/Nicor merger was announced.

Id. at 13. Commission acceptance of the Joint Applicants statement that “they have not developed a formal transition plan at this time” would abandon reasoning in the Nicor/AGL merger proceeding.

7. GCI are aware of the July 6, 2015 statutory target for a Commission decision on the proposed acquisition. The Commission will likely require additional time for a meaningful analysis of additional testimony on the impact of the Liberty Final Report’s findings of management shortcomings at the highest management and ownership levels, and of inter-corporate dysfunction. Such matters are relevant to whether the statutory approval requirements of Section 7-204 are met, or (alternatively) what conditions are necessary to protect the interests of PGL and its customers that should be attached to any merger approval. The Commission has statutory authority to order an extension of up to three months “to consider reasonably unforeseeable changes in circumstances subsequent to the Applicant’s Initial Filing.” 220 ILCS 5/7-204(d). The Liberty Final Report and its 95 recommendations are an “unforeseeable change in circumstance” directly relevant to the Commission’s consideration of the Joint Applicants’ proposed reorganization.

8. Consideration of the auditors’ recommendations and the JA’s needed transition plans related to the AMRP should take place in the context of hearings on the report’s impact on the Commission’s determination as to whether the merger satisfies the requirements of Section 7-204(b) for approval or (alternatively) defining appropriate conditions on any approval ordered pursuant to Section 7-204(f). GCI therefore moves, pursuant to Section 200.870 of the Commission’s rules, that the record in this case be reopened for that purpose.

After the record in a proceeding has been marked ‘heard and taken’ but before issuance of a final order by the Commission, the Hearing Examiner may, on application by staff or any party, on his or her own motion or when directed by the Commission, hold additional hearings. Such

application shall state the reasons therefor, including material changes of fact or of law, and shall contain a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced. Unless directed by the Commission, the holding of additional hearings under this Section shall be subject to the prior approval of the Chief Hearing Examiner.

83 Ill. Adm. Code § 200.870.


9. GCI respectfully requests expedited treatment of this Emergency Motion. GCI proposes that parties wishing to respond to this Motion do so by Tuesday, June 2, 2015. GCI requests a Reply date of Thursday, June 4, 2015.

Conclusion

Wherefore, GCI respectfully request that the record in this case be re-opened, pursuant to Section 200.870 of the Commission's Rules of Practice, for the purpose of admitting the Liberty Final Report in the record and to conduct hearings to require the JA to detail in sworn testimony a transition plan that ensures the continuity of any on-going remedial efforts by PGL in response to the audit and provides specific plans for fixing the documented inter-corporate dysfunction tied to AMRP mismanagement. In addition, pursuant to Section 7-204(d), the Commission should extend the schedule of this proceeding, to the extent needed, for the Commission to fulfill its statutory obligations, as described above. Finally, GCI urges the Commission to enter a schedule for responses and replies to the Motion consistent with the proposed timeline outlined in paragraph 10.

Respectfully submitted,

CITY OF CHICAGO



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